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8 UNITED STATES DISTRICT COURT  
 9  
 10 NORTHERN DISTRICT OF CALIFORNIA

SC

11 ELIZABETH MAIDA,

Case No.:

CV 08 2342

12 Plaintiff,

13 vs.

COMPLAINT FOR BENEFITS  
UNDER A GROUP DISABILITY  
EMPLOYEE BENEFIT PLAN

14  
 15 LIFE INSURANCE COMPANY OF  
 16 NORTH AMERICA; GRANITE  
 17 BROADCASTING CORP LTD  
 18 PLAN;

19 Defendants.

20  
 21 Plaintiff alleges as follows:

22 1. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331,  
 23 1337 and 29 U.S.C. § 1132(a), (e), (f) and (g), of the Employee Retirement Income  
 24 Security Act of 1974, 29 U.S.C. § 1101, *et seq.* (hereafter "ERISA") as it involves  
 25 a claim by Plaintiff for Disability benefits under an employee benefit plan  
 26 regulated and governed under ERISA. Jurisdiction is predicated under these code  
 27 sections as well as 28 U.S.C. § 1331 as this action involves a federal question.

28 2. The events or omissions giving rise to Plaintiff's claim occurred in this



1 judicial district, thus venue is proper here pursuant to 28 U.S.C. § 1331(b)(2), and  
 2 the ends of justice so require.

3       3. The ERISA statute at 29 U.S.C. § 1133, in accordance with  
 4 Regulations of the Secretary of Labor, provides a mechanism for internal appeal of  
 5 benefit denials. Those avenues of appeal have been exhausted.

6       4. Plaintiff is informed and believes and thereon alleges that Defendant,  
 7 GRANITE BROADCASTING CORP LTD PLAN, is an employee welfare benefit  
 8 plan established and maintained by Granite Broadcasting Corp. (which, Plaintiff  
 9 alleges, does business in the State of California, where MS. MAIDA was employed  
 10 just prior to her disability), to provide its employees, including MS. MAIDA, with  
 11 income protection in the event of a disability, and, is the Plan Administrator.

12       5. Plaintiff alleges upon information and belief that Defendant, LIFE  
 13 INSURANCE COMPANY OF NORTH AMERICA ("LINA"), is, and at all  
 14 relevant times was, a corporation duly organized and existing under and by virtue  
 15 of the laws of the State of Pennsylvania; authorized to transact and transacting the  
 16 business of insurance in this state; and, the insurer and Claims Administrator for  
 17 the Plan.

18       6. At all relevant times Plaintiff was, a resident and citizen of the State  
 19 of California, an employee of Granite Broadcasting Corp., its affiliates and/or  
 20 subsidiaries, and a participant in the Plan.

21       7. Based upon information and belief, Plaintiff alleges that Defendant  
 22 LINA<sup>1</sup> issued Group Long Term Disability Policy number FLK-8059 to Granite  
 23 Broadcasting Corp. to insure its Plan, and the eligible participants and beneficiaries  
 24 of the Plan; and that the Policy promised to pay MS. MAIDA monthly benefits for  
 25

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26       <sup>1</sup> Although correspondence to MS. MAIDA during the administration of this claim has "CIGNA" on the letterhead,  
 27 LINA was the underwriting and issuing company. Additionally, according to correspondence to MS. MAIDA on the  
 28 claim: "'CIGNA' and 'CIGNA Group Insurance' are registered service marks and refer to various operating  
 subsidiaries of CIGNA Corporation. Products and services are provided by these subsidiaries and not by CIGNA  
 Corporation. These subsidiaries include Life Insurance Company of North America..." Therefore, both CIGNA and  
 Life Insurance Company of North America will be referred to as "LINA" herein.



1 a specified period of time should she become disabled. Therefore, LINA suffers  
2 from a structural conflict as it both funds the plan and decides whether the  
3 claimants will receive benefits under the Plan<sup>2</sup>.

4           8. According to the terms of the Plan, LINA promised to pay benefits as  
5 follows:

Term	Provision
Benefit Waiting Period	<p><b>CORE PLAN:</b> The Benefit Waiting Period for an Employee will be 180 days of continuous Disability. A period of Disability will be considered continuous even if the Disabled Employee returns to full time work in his regular job for up to a total of 30 days during the Benefit Waiting Period. The Benefit Waiting Period will be extended by the number of days the Employee temporarily returned to work.</p>
	<p><b>BUY-UP OPTION:</b> The Benefit Waiting Period for an Employee will be 90 days of continuous Disability. A period of Disability will be considered continuous even if the Disabled Employee returns to full time work in his regular job for up to a total of 15 days during the Benefit Waiting Period. The Benefit Waiting Period will be extended by the number of days the Employee temporarily returned to work.</p>
Monthly Benefit	<p><b>CORE PLAN:</b> The Monthly Benefit for an Employee for any month is:</p>

26       <sup>2</sup> According to the recent case of *Saffon v. Wells Fargo & Co. Long Term Disability Plan* (F.3d, 2008 WL 80704  
27       (9th Cir. (Cal.) Jan. 9, 2008): “In *Bruch*, the Supreme Court instructed us to ‘weigh[]’ a fiduciary’s ‘conflict of  
28       interest’ as ‘a facto[r] in determining whether there is an abuse of discretion.’...MetLife labors under such a conflict  
      of interest: It both decides who gets benefits and pays for them, so it has a direct financial incentive to deny  
      claims...The danger pervades the ERISA-plan world that a self-interested plan decision maker will take  
      advantage...to line its own pockets by denying meritorious claim.”

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Term	Provision
		<p>1. The lesser of:</p> <ol style="list-style-type: none"> <li>60% of the Employee's Basic Monthly Earnings rounded to the nearest dollar; or</li> <li>\$6,000; and</li> </ol> <p>2. minus Other Benefits for that month.</p> <p>BUY-UP OPTION: The Monthly Benefit for an Employee for any month is:</p> <ol style="list-style-type: none"> <li>The lesser of:           <ol style="list-style-type: none"> <li>70% of the Employee's Basic Monthly Earnings rounded to the nearest dollar; or</li> <li>\$6,000; and</li> </ol> </li> <li>minus Other Benefits for that month.</li> </ol> <p>The Monthly Benefit will not be less than \$100 or 10% of the Monthly Benefit before reductions due to "Other Benefits" whichever is greater, regardless of any reductions shown in this Schedule.</p>
	<b>Duration of Benefits</b>	<p>The Insurance Company will stop paying Monthly Benefits on the earlier of the following dates:</p> <ol style="list-style-type: none"> <li>the date the Employee ceases to be Disabled;</li> <li>the Employee's 65<sup>th</sup> birthday if he becomes Disabled before his 60<sup>th</sup> birthday;</li> <li>the end of 5 years from the date the Employee becomes Disabled if he becomes disabled on or after his 60<sup>th</sup> birthday.</li> </ol>
	<b>Disability</b>	An Employee will be considered Disabled if because of Injury or Sickness:

Term	Provision
	1. he is unable to perform all the material duties of his regular occupation; and after Monthly Benefits have been payable for 24 months, he is unable to perform all the material duties of any occupation for which he is or may reasonably become qualified based on his education, training or experience.
<b>Residual Disability</b>	An Employee will be considered Residually Disabled if, while he is Disabled, he returns to any work for wage or profit.

9  
10 9. Prior to her disability, MS. MAIDA was an Account Executive for  
11 one of Granite Broadcasting Corp.'s affiliates and/or subsidiary employers, KNTV,  
12 a Bay Area NBC television station. Her substantial and material duties included  
13 establishing relationships with, and selling local spot time to, ad agencies and  
14 direct accounts through face to face presentations.

15 10. Unfortunately, a series of medical events, beginning in 1999 led to her  
16 inability to perform the substantial and material duties of her own, or any,  
17 occupation and her ongoing disability under the terms of the Plan.

18 11. On or about May 6, 1999, it was reported by a physician at UCSF  
19 Stanford Health Care:

- 20 • "...Ms. Maida has had bilateral Silicone implants that have now  
21 ruptured causing severe scar deformity."
- 22 • "Due to her reaction to implants with severe scarring as well as the  
23 possibility of leakage, she is not a candidate for further implant  
24 reconstruction."
- 25 • "Removal of the implants will leave her with her severe  
26 deformities and painful scar deformities from the ruptured  
27 implants."
- 28 • "At this point, the best and only reconstruction is to perform



3           12. Unfortunately, the TRAM flap procedure left MS. MAIDA with a thin  
4 abdominal wall, which was very susceptible to hernias.

5           13. On or about October 23, 2001, Bruce L. Allen, M.D., advised the  
6 following:

- “Elizabeth Maida was seen with regard to **recurrent ventral hernias**<sup>4</sup>.”
- “...she has had five separate procedures, which have involved the use of mesh.”
- “She is presently aware of a new recurrence in the right lower quadrant.”
- “She has also been advised that because of her multiple previous procedures, she would be **at risk for other hernias in the future.**”  
(Emphasis added.)

16        14. Due to persistent abdominal pain and recurrent hernia surgeries<sup>5</sup>, MS.  
17 MAIDA became disabled under the terms of the Plan on or about November 7,  
18 2001, and submitted a claim to LINA for payment of Long Term Disability  
19 benefits.

20 15. On or about July 2, 2002, LINA advised MS. MAIDA that it had

<sup>3</sup> TRAM stands for the transverse rectus abdominis muscle, which is located in the lower abdomen, between the waist and the pubic bone. Unlike most other methods of breast reconstruction, the TRAM flap is completely natural, because it uses the body's own tissues to reconstruct your breast. However, the TRAM Flap operation is a major surgery not to be taken lightly by either the physician or the patient.

<sup>4</sup> Ventral, or incisional hernias, are caused by thinning or stretching of scar tissue that forms after surgery. This weakened scar tissue then creates a weakness in the abdominal wall. Excessive weight gain, physical activity that places pressure on the abdomen, pregnancy, straining during bowel movements because of constipation, severe vomiting, or chronic and intense coughing causes the scar tissue to thin or stretch. Because the abdominal wall is weak, the hernia occurs during abdominal strain.

<sup>5</sup> As explained by MS. MAIDA in a telephone conversation with LINA on or about October 15, 2002: "...hernias...keep recurring because her stomach lining is very thin, as she no longer has stomach muscles. They were used to rebuild her chest area after required mastectomy from silicone implant leak."

1 approved her claim in a letter which stated:

- “...your claim for Long Term Disability...benefits have been approved.”
- “Your first check will be sent separately...representing benefits due for the period of May 6, 2002 through July 5, 2002.”

6           16. Further substantiating her disability, on or about December 24, 2003,  
7   a Social Security Administrative Law Judge, after a hearing and submission of  
8   documentation certifying MS. MAIDA's disability by LINA's own agent,  
9   Advantage 2000, found that MS. MAIDA had been disabled since or about  
10   November 7, 2001<sup>6</sup>. According to the Social Security Administration's Decision:

- “...a hearing was held on December 22, 2003 in San Jose, California.”
- “After a thorough evaluation of the entire record, the Administrative Law Judge concludes that the claimant has been disabled since November 7, 2001.”
- “The claimant has not engaged in any substantial gainful activity since the disability onset date.”
- “The claimant has the **following impairments which are considered to be ‘severe’...multiple hernias and multiple surgeries following mastectomy after failed breast augmentation.**”  
(Emphasis added.)

22 17. LINA continued to pay benefits through the "Own Occupation"  
23 disability definition period, and, on or about April 7, 2004, advised MS. MAIDA

26       <sup>6</sup> According to the Social Security definition of disability, which is more stringent than the subject Plan's Disability  
27       definition: "A person is disabled, and thereby eligible for Social Security disability insurance benefits and  
28       Supplemental Security Income (SSI), "only if his physical or mental impairment or impairments are of such severity  
      that *he is not only unable to do his previous work but cannot*, considering his age, education, and work experience,  
      *engage in any other kind of substantial gainful work which exists in the national economy.*" 42 U.S.C.  
      §§423(d)(2)(A), 1382c(a)(3)(B) (emphasis added).

1 that her long term disability had also been approved during the "Any Occupation"  
2 disability definition period. According to LINA's letter:

3       • "We have completed our review to determine if you are currently  
4        Totally Disabled from performing any occupation for which you  
5        are qualified at this time, based on your education, training and  
6        experience."

7       • "Based on our evaluation, continued benefits have been  
8        approved..."

9       18. On or about April 6, 2006, Dr. Hilliard, a board certified family  
10      physician, certified MS. MAIDA's continuing disability when she stated that her  
11      physical impairment was a Class 5 (Severe limitations of functional capacity;  
12      incapable of minimal (sedentary) activity).

13       19. On or about September 6, 2006, Tue Dinh, M.D., a board certified  
14      plastic surgeon, was asked to examine MS. MAIDA and subsequently reported:

15       • "Mrs. Maida has had previous multiple surgeries on the abdomen."

16       • "They started with removal of bilateral silicone ruptured breast  
17        implant and subsequent bilateral rotational TRAM flap in 1999..."

18       • "She had mesh placed in the abdomen for reconstruction."

19       • "Subsequently, she has had multiple surgeries (11...) to treat over  
20        20 recurrent hernias."

21       • "She still has at least three recurrent hernias, one on the right lower  
22        abdomen, one on the left upper abdomen and on the left lateral  
23        abdominal area."

24       • "She is in constant pain."

25       • **PAST MEDICAL HISTORY:** "Significant for autoimmune  
26        connective tissue disease...also has liver function abnormality."

27       • **IMPRESSION:**

28        • "My assessment...is that she has recurrent abdominal hernia



due to the failure of the mesh.”

- “...in order to put a newer mesh in... We will need to be careful because she has had previous surgery, multiple times...”
- “I will talk to Dr. Baker and...have asked...to obtain the operative report from the initial surgery...and the last three operative reports on her abdomen, so I can further understand what is available and what is left in her abdominal wall.”

20. On or about December 1, 2006, Harriet Hilliard, M.D. wrote the following to LINA further substantiating MS. MAIDA's disability:

- “Chronic abd wall pain secondary to multiple hernia repair procedures which have failed.”
- “...the patient’s complaints of chronic pain can be substantiated by her recurring hernias.”
- “Disability form was completed...due to patient’s active and past chronic history of abdominal pain and failed hernia repairs.”
- **MEDICATIONS:** Morphine Sulfate<sup>7</sup>; Lorazepam<sup>8</sup>; Ambien<sup>9</sup>.

21. On or about December 5, 2006, MS. MAIDA was once again admitted to a hospital. According to the Hospital's records:

- “...54 year old...with past history of breast implants status post bilateral mastectomy...”
- “...breast implants...ruptured and destroyed breast tissue.”
- “...has chronic recurrent abdominal and umbilical hernias, has had over 12 surgeries to repair those.”

<sup>7</sup> Side effects of this narcotic medication include sedation; respiratory depression; dizziness; drowsiness; upset stomach; vomiting; constipation; stomach pain and difficulty urinating.

<sup>8</sup> This medication, also known as Ativan, has the following side effects: depression; loss of orientation; headache; sleep disturbance; sedation; dizziness; weakness and unsteadiness.

<sup>9</sup> Side effects of this medication include: daytime drowsiness; dizziness; lightheadedness; diarrhea; and, constipation.

- 1        • “...2 days ago...she develop[ed] some crampy abdominal pain and
- 2        notice some blood in her stool.”
- 3        • **MEDICATIONS:** Include morphine. She is part of a pain
- 4        management clinic for recurrent hernias.
- 5        • **IMPRESSION:** Suspect diverticulitis.

6        22. On or about December 7, 2006, MS. MAIDA underwent 2 more  
 7        procedures: an esophagogastroduodenoscopy<sup>10</sup>, which revealed a hiatal hernia<sup>11</sup>  
 8        and gastritis (later identified as “marked chronic gastritis<sup>12</sup>” in a Surgical  
 9        Pathology Report); and a colonoscopy which revealed colitis<sup>13</sup>, sigmoid  
 10        diverticulosis<sup>14</sup> and internal/external hemorrhoids.

11        23. However, after having paid disability benefits for some four and a half  
 12        years, and without having conducted an independent medical examination, on or  
 13        about December 20, 2006, LINA unreasonably, arbitrarily and capriciously denied  
 14        further disability benefits to MS. MAIDA.

15        24. Additionally, in denying her benefits, LINA unreasonably relied upon  
 16        in-house financially biased physicians who never examined MS. MAIDA, and

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18        <sup>10</sup> Esophagogastroduodenoscopy (EGD) is an examination of the lining of the esophagus, stomach, and upper  
 19        duodenum with a small camera (flexible endoscope) which is inserted down the throat.

20        <sup>11</sup> A hernia occurs when one part of the body protrudes through a gap or opening into another part. A hiatal hernia  
 21        forms at the opening in your diaphragm where your food pipe (esophagus) joins your stomach. Part of the stomach  
 22        pushes through this opening causing a hiatal hernia.

23        <sup>12</sup> Chronic gastritis is an inflammation of the lining of the stomach that occurs gradually and persists for a prolonged  
 24        time. It may be caused by prolonged irritation from the use of nonsteroidal anti-inflammatory drugs (NSAIDs),  
 25        infection with the bacteria Helicobacter pylori, pernicious anemia (an autoimmune disorder), degeneration of the  
 26        lining of the stomach from age, or chronic bile reflux. Common to all people with gastritis is pain or discomfort in  
 27        the upper part of the belly (abdomen), sometimes called dyspepsia.

28        <sup>13</sup> Colitis (also called ulcerative colitis) is an acute or chronic inflammation of the membrane lining the colon—the  
 29        large intestine or bowel. Colitis causes inflammation and sores, called ulcers, in the top layers of the lining of the  
 30        large intestine. The inflammation makes the colon empty frequently, causing diarrhea. Ulcers form in places where  
 31        the inflammation has killed colon lining cells. The ulcers bleed and produce pus and mucus. Symptoms may include  
 32        abdominal pain, diarrhea, rectal bleeding, painful spasms (tenesmus), lack of appetite, fever, and fatigue.

33        <sup>14</sup> A diverticulum is a small circumscribed evagination of the intestinal wall in the small or large bowel. Most  
 34        diverticula are found in the sigmoid, a segment of the large bowel located in the lower left abdomen. The presence  
 35        of several diverticula is called diverticulosis. Symptoms include pain in the lower abdomen; fever; signs of  
 36        inflammation in the blood; and irregular bowel movements.



1 who, Plaintiff alleges upon information and belief, lacked the appropriate training  
 2 to review MS. MAIDA's complex medical claim.

3 25. On or about January 5, 2007, Dr. Stephen M. Thomas reported the  
 4 following:

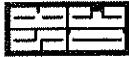
- 5 • "The patient has recently been hospitalized...for abdominal pain  
 6 and GI bleeding."
- 7 • "She was found to have **severe acute descending colitis**."
- 8 • "Ongoing problems include **chronic lower abdominal pain**  
 9 **secondary to recurrent, poorly operable ventral hernias...**"
- 10 • "I have called and discussed this case with her PCP at the time of  
 11 her development of disability – Dr. Lorraine Page...<sup>15</sup>,"
- 12 • "This 54 year old female has **progressive abdominal wall**  
 13 **weakening** which has been documented many times by various  
 14 surgeons."
- 15 • "She has **failed multiple levels of interventions** which have **left**  
 16 **her with more pain and decreased function**."
- 17 • "In reviewing her disability status, **there certainly is no**  
 18 **improvement from 2003 when she was first certified**."
- 19 • "I see no medical reason why she would have any easier time  
 20 working today than she had at that time." (Emphasis added.)

21 26. Shortly thereafter, MS. MAIDA wrote to LINA and stated:

- 22 • "Dr. Thomas has certified the problems I have – I cannot sit up but  
 23 a few hours a day without severe discomfort and pain."
- 24 • "I have trouble standing up straight."
- 25 • "I have pain with walking, standing, climbing stairs and lifting or

---

26  
 27 <sup>15</sup> According to Dr. Thomas' notes regarding that conversation: "In his opinion, because the patient is suffering from  
 28 similar complaint and still on medication with pain management as the only available treatment for her hernias as



1 carrying.”

2

- 3 “Also, my previous Dr.’s have said they cannot help me because
- 4 too many surgeries have been done and future surgeries will not
- 5 help...my problems have not changed since 2003.”
- 6
- 7 “I am also on very strong long term pain medication...”

8 27. On or about April 25, 2007, MS. MAIDA underwent a Functional  
9 Capacity Evaluation which also substantiated her disability as follows:

10

- 11 “She has now had a total of 11 surgeries for the hernias alone and
- 12 has been **ruled out for any more surgeries because of the**
- 13 **extensive scar tissue.”**
- 14 “She currently has **existing hernias** that are being **treated with**
- 15 **morphine** pain medication.”
- 16 “She has also **developed colitis** as a result of her heavy
- 17 medication.”
- 18 “Prior to her medical problems she was working for NBC
- 19 television in California as a television commercial salesperson.”
- 20 “She is now referred for a Functional Capacity Evaluation to help
- 21 determine her abilities.”
- 22 “**ASSESSMENT OF WEAKNESSES:** Poor postural tolerance of
- 23 any kind secondary to existing hernia; decreased ability to lift and
- 24 carry; extremely guarded posture with bend at the waist secondary
- 25 to hernias; decreased lower extremity strength on manual muscle
- 26 testing; decreased ability to perform activities of daily living.
- 27 “**RECOMMENDATIONS:**
- 28 ■ “She appears **limited in all activities secondary to the pain**
- 29 **from her hernia and subsequent surgeries.”**

30 diagnosed by multiple specialists, the patient’s disability status is unchanged. There is no reason to expect that she  
31 will be any more successful in an attempt to be productive in employment now than there was in 2003.”

- 1           ■ “She is not able to stand completely erect...due to her pain and
- 2           has extremely guarded movement patterns.”
- 3           ■ “**It does not appear likely that Ms. Maida will work again**
- 4           unless her condition was to drastically improve.”
- 5           ■ “This does not appear likely given her propensity for
- 6           developing hernias and the fact that further surgery has been
- 7           ruled out.” (Emphasis added.)

8           28. Despite the medical and other evidence substantiating her disability,  
 9           including the Functional Capacity Evaluation and the use of morphine for pain  
 10          control, LINA continued to rely upon in-house financially biased physicians who  
 11          never examined MS. MAIDA to uphold the denial of the claim on or about March  
 12          7, 2007, and July 19, 2007.

13          29. Additionally, in its denial of benefits, LINA unreasonably, arbitrarily  
 14          and capriciously misinterpreted the terms of the Plan by equating an ability to  
 15          perform the activities of daily living with an ability to work<sup>16</sup>. At the time that  
 16          LINA made this allegation, it knew, or should have known, that the disability  
 17          definitions in the Plan do not require an inability to perform the activities of daily  
 18          living in order to qualify for disability benefits, only an inability to perform the  
 19          material duties of any occupation. Such Plan misinterpretation heightens the level  
 20          of skepticism with which a court views this already conflicted administrator’s  
 21          decision.

22          30. To date, even though MS. MAIDA has been, and remains, disabled,  
 23          LINA has not paid MS. MAIDA any disability benefits beyond November 5, 2006.  
 24          The arbitrary and capricious nature of LINA’s denial decision is evidenced by, but  
 25          not limited to, the following:

- 26           • LINA engaged in procedural violations of its statutory obligations

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27

28          <sup>16</sup> According to LINA’s letter dated on or about July 19, 2007: “We note...that performing basic activities of daily living, such as dressing, showering, grooming, etc., easily reproduces the physical demands of sedentary type work.”

1 under ERISA, including, but not limited to, failing to identify the  
 2 medical consultants who reviewed her file; failing to advise MS.  
 3 MAIDA of what specific documentation it needed for her to perfect  
 4 her claim; and, failing to provide a complete copy of all documents,  
 5 records, and other information relevant to her claim despite a  
 6 request by Plaintiff in violation of 29 C.F.R. Section 2560.530-  
 7 1(h)(2)(iii);

8 • LINA ignored the obvious, combed the record and has taken  
 9 selective evidence out of context as a pretext to deny Plaintiff's  
 10 claim;

11 • LINA failed to obtain a copy of all the documentation  
 12 substantiating disability that was submitted by its own agent,  
 13 Advantage 2000, to the Social Security Administration;

14 • LINA did not give proper weight to the Social Security  
 15 Administration's continued finding that MS. MAIDA was disabled  
 16 from any occupation<sup>17</sup>.

17 • LINA did not have MS. MAIDA independently examined to  
 18 adequately refute the findings of her treating physicians; and,

19 • LINA ignored the opinions of MS. MAIDA's treating physicians.  
 20 Deference should be given to the treating physician's opinions as  
 21 there are no *specific, legitimate* reasons for rejecting the treating  
 22 physician's opinions which are based on *substantial evidence* in the  
 23 claim file. Further, LINA's **physicians'** opinions do not serve as  
 24 *substantial evidence*, as they are not *supported by evidence* in the  
 25 claim file nor are they *consistent with the overall evidence* in the



26  
 27  
 28 <sup>17</sup> A Plan administrator may not arbitrarily disregard a favorable ruling by the Social Security Administration as, at a minimum, it provides support for the conclusion that an administrative agency charged with examining MS. MAIDA's medical records found objective support for its favorable decision.

1 claim file.

2 31. For all the reasons set forth above, the decision to deny disability  
 3 insurance benefits was arbitrary, capricious, wrongful, unreasonable, irrational,  
 4 sorely contrary to the evidence, contrary to the terms of the Plan and contrary to  
 5 law. Clearly, LINA abused its discretion in deciding to deny this claim as the  
 6 evidence shows its denial decision was arbitrary and capricious. Further, LINA's  
 7 denial decision and actions heighten the level of skepticism with which a court  
 8 views a conflicted administrator's decision under *Abatie v. Alta Health & Life*  
 9 *Insurance Co.*, 458 F.3d 955 (9<sup>th</sup> Cir. 2006).

10 32. As a direct and proximate result of the LINA's failure to provide MS.  
 11 MAIDA with disability benefits, MS. MAIDA has been deprived of said benefits  
 12 from on or about November 5, 2006, to the present date.

13 33. As a further direct and proximate result of the denial of benefits, MS.  
 14 MAIDA has been required to incur attorney fees to pursue this action, and is  
 15 entitled to have such fees paid by defendants pursuant to 29 U.S.C. § 1132(g)(1),  
 16 ERISA § 502(g)(1).

17 34. A controversy now exists between the parties as to whether MS.  
 18 MAIDA is disabled as defined in the Plan. Plaintiff seeks the declaration of this  
 19 Court that she meets the Plan definition of disability and thus she is entitled to  
 20 benefits from the Plan. In the alternative, Plaintiff seeks a remand to the Plan  
 21 Administrator for a determination of Plaintiff's claim consistent with the terms of  
 22 the Plan.

23 WHEREFORE, Plaintiff prays for relief against Defendants as follows:

24 1. An award of benefits in the amount not paid MS. MAIDA from on or  
 25 about November 5, 2006, to the date of judgment herein, together with interest at  
 26 the legal rate on each monthly payment from the date it became due until the date  
 27 it is paid; or, in the alternative, a remand to the Plan Administrator for a  
 28 determination of Plaintiff's claim consistent with the terms of the Plan;



1           2. An order determining MS. MAIDA is entitled to future disability  
2 payments so long as she remains disabled as defined in the Plan;

3           3. An order requiring LINA to pay \$110 a day, from the date first  
4 requested, for each day in which LINA failed or refused to comply with Plaintiff's  
5 requests for information which LINA was required, by statute/regulation, to  
6 furnish pursuant to ERISA section 502(c) [29 USC sec. 1132(c)].

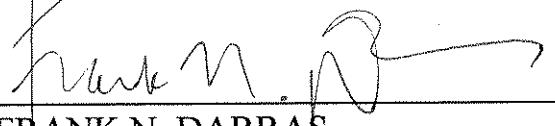
7           4. For reasonable attorney fees incurred in this action; and

8           5. For such other and further relief as the Court deems just and proper.

9

10          DATED: April 28, 2008

SHERNOFF BIDART DARRAS  
ECHEVERRIA, LLP

  
FRANK N. DARRAS

Attorney for Plaintiff: Elizabeth Maida

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LIFE INSURANCE COMPANY OF NORTH AMERICA  
(herein called the Company)

Amendment to be attached to and made a part of the Group Policy  
A Contract between the Company and

GRANITE BROADCASTING CORPORATION

(herein called the Policyholder)

Group Policy No.: FLK-8059

Effective Date: July 1, 1995

The Amendment will be in effect only for eligible Employees in Active Service on the Effective Date shown above. If an Employee is not in Active Service on the date he would otherwise become eligible, he will become eligible on the date he returns to Active Service provided any required Waiting Period has been satisfied.

The Company and the Policyholder hereby agree that the Policy is amended as follows:

As of the Effective Date shown above, Classes of Eligible Employees of the Affiliates or Subsidiaries named below are eligible to be covered under the Group Policy.

AFFILIATES OR SUBSIDIARIES

WWMT-TV

PITTSBURGH  
OCTO 5 1995  
Group Life & Disability  
Benefits Office

Except for the above, this amendment does not change the Policy in any way.

FOR THE COMPANY

By:

SPECIMEN

Date:

EXHIBIT A

000017

LIFE INSURANCE COMPANY OF NORTH AMERICA  
1601 CHESTNUT STREET, PHILADELPHIA, PA 19192  
A STOCK INSURANCE COMPANY

GROUP  
LONG TERM DISABILITY  
INCOME POLICY  
(Non-Participating)

Group Policy No. FLK-8059

Policy Delivered In: IL

Policy Effective Date: January 1, 1995

Policy Anniversary Date: January 1

Premium Due Dates: February 1 and the first day of each calendar month thereafter  
subject to Annual adjustment.

This is a contract between us, the Life Insurance Company of North America, and you,

GRANITE BROADCASTING CORPORATION

(the Policyholder).

In return for your application, and for the payment of premiums as set forth in  
this policy, we agree to pay the benefits described in this policy. These benefits  
are subject to all of the terms of this policy, including any riders, endorsements,  
and amendments.

This policy goes into effect on the Policy Effective Date, 12:01 a.m. at your  
address. The policy will stay in force as long as the premium is paid, until  
terminated by you or us.

This contract shall be governed by the laws of the state in which it is delivered.

IN WITNESS WHEREOF, we have signed this policy at Philadelphia, PA.

*Ellana G. Hessing*

*John K. Leonard*

JOHN K. LEONARD, President

PITTSBURGH  
MAR 20 1995  
Group Life  
Benefits Office

SPECIMEN

LM-6N05

Group Long Term Disability Income Policy

EXHIBIT A

000018

## LONG TERM DISABILITY INCOME POL

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This policy includes the following attached forms on date of issue:

LONG TERM DISABILITY INCOME POLICY

DEFINITIONS

EMPLOYER. The term Employer means the Policyholder and all Affiliated Employers shown in the "Affiliated or Subsidiary Employers" rider.

EMPLOYEE. The term Employee means a full-time Employee of the Employer, but does not include Employees who are part-time or temporary or who normally work less than 30 hours a week for the employer.

ACTIVE SERVICE. An Employee will be considered in Active Service with the Employer on a day which is one of the Employer's scheduled work days if he is performing in the usual way all of the regular duties of his work for the Employer on a full time basis on that day, either at one of the Employer's usual places of business or at some location to which the Employer's business requires him to travel. An Employee will be deemed in Active Service on a day which is not one of the Employer's scheduled work days only if he was in Active Service on the preceding scheduled work day.

INJURY. The term Injury means an accidental bodily injury.

SICKNESS. The term Sickness means a physical or mental illness. It also includes pregnancy.

RETIREMENT PLAN. The term Retirement Plan means any defined benefit plan or defined contribution plan (including a profit sharing plan) sponsored by the Employer. It does not include: (1) an individual deferred compensation agreement; (2) a profit sharing or any other retirement or savings plan that is maintained in addition to a defined benefit or other defined contribution pension plan; or (3) any Employee savings plan including a thrift, stock option or stock bonus plan, individual retirement account or 401(k) plan.

## LONG TERM DISABILITY INCOME POLICY

## DEFINITIONS (Continued)

**BASIC EARNINGS.** The term Basic Earnings means the Employee's rate of pay reported by the Employer. It does not include overtime, bonus, additional compensation or pay for more than 40 hours a week.

For an Employee who is paid wholly or in part by commissions, the term Basic Earnings will also include commissions based on an average of the commissions paid by the Employer for the 12 months immediately preceding the onset of Disability. If such Employee was not in the employ of the Employer during the entire preceding 12 month period, his commissions will be based on an average of the total number of months he was so employed.

Basic Earnings are determined initially on the date the Employee becomes insured. A change in the amount of Basic Earnings will be considered effective on the date of the change. If the Employee is not in Active Service on that day, no increase in Basic Earnings will be considered effective until he returns to Active Service for one full day. In no event will an increase in an Employee's Basic Earnings be considered effective if it occurs:

- (1) between separate periods of Disability which are considered one period under the Successive Periods of Disability provision; or
- (2) during a Benefit Waiting Period.

**INDEXED BASIC EARNINGS.** An Employee's Indexed Basic Earnings is an amount determined as follows:

For the first year the Employee is disabled, his Indexed Basic Earnings will be equal to his Basic Earnings.

After the Employee has been disabled for 1 year, his Basic Earnings will be increased on each annual anniversary of the date he became disabled. The amount of each increase will equal A or B, whichever is less where:

A = 10% of the Employee's Indexed Basic Earnings during the preceding year of Disability.

B = The rate of increase in the Consumer Price Index (CPI-W) during the preceding calendar year.

The Employee's Basic Earnings will not be decreased by a drop in the Consumer Price Index (CPI-W).

CPI-W means the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the US Department of Labor. If the index is discontinued or changed, another nationally published index that is comparable to the CPI-W will be used.

LONG TERM DISABILITY INCOME POLICY

DEFINITIONS (Continued)

DISABILITY. An Employee will be considered Disabled if because of Injury or Sickness:

1. he is unable to perform all the material duties of his regular occupation; and after Monthly Benefits have been payable for 24 months, he is unable to perform all the material duties of any occupation for which he is or may reasonably become qualified based on his education, training or experience.

RESIDUAL DISABILITY. An Employee will be considered Residually Disabled if, while he is Disabled, he returns to any work for wage or profit.

LONG TERM DISABILITY INCOME POLICY

ELIGIBILITY FOR EMPLOYEE INSURANCE

Each Employee in one of the Classes of Eligible Employees shown below will become eligible for Employee Insurance on the day he completes the Waiting Period, if any. An Employee who was previously insured and whose insurance ceased must satisfy the New Employee Group Waiting Period to become insured again. If the insurance on an Employee ceased because he was no longer employed in a Class of Eligible Employees, he is not required to satisfy any Waiting Period if he again becomes a member of a Class of Eligible Employees within one year after his insurance ceased.

**INITIAL EMPLOYEE GROUP.** The Initial Employee Group is made up of Employees:

- (1) in the employ of an Employer on the Effective Date of the policy; or
- (2) in the employ of an Employer on the date that Employer becomes an Affiliated Employer.

**NEW EMPLOYEE GROUP.** The New Employee Group is made up of Employees whose employment with an Employer starts after the Effective Date of the policy.

**WAITING PERIOD.**

Initial Employee Group:  
None

New Employee Group:

On the first day of the month following thirty continuous days of Active Service with the Employer.

**CLASSES OF ELIGIBLE EMPLOYEES.**

Class 1      All active full-time employees of the Policyholder working a minimum of 30 hours per week.

LONG TERM DISABILITY INCOME POLI

EFFECTIVE DATE OF EMPLOYEE INSURANCE

Each Employee will become insured for Employee Insurance under either (1) or (2) as shown below:

- (1) An Employee who is not required to contribute toward the cost of his Group Disability Core Plan will become insured for Employee Insurance on the date he becomes eligible for it.
- (2) An Employee who is required to contribute toward the cost of his Group Disability Buy-Up Plan may elect to be insured for Employee Insurance only by signing a payroll deduction form approved by the Policyholder and the Insurance Company. The Effective Date of his insurance depends on the date on which he elects the insurance.
  - (a) If he elects Employee Insurance on or before the date he becomes eligible, his insurance will become effective on the date he becomes eligible.
  - (b) If he elects Employee Insurance within 31 days after he becomes eligible, his insurance will become effective on the date of election.
  - (c) If he elects Employee Insurance more than 31 days after he becomes eligible, his insurance will become effective on the date the Insurance Company agrees in writing to insure him.
  - (d) If his Employee Insurance ceased because he cancelled his payroll deduction, and he again elects to be insured, his insurance will become effective on the date the Insurance Company agrees in writing to insure him.

Under the circumstances described in items c and d, the Insurance Company may require the Employee to submit evidence of good health acceptable to the Insurance Company at his own expense before it agrees to insure him.

If an Employee is not in Active Service on the date his insurance would otherwise become effective, it will become effective on the date he returns to Active Service.

LONG TERM DISABILITY INCOME POLICY

TERMINATION OF INSURANCE

The insurance on an Employee will cease on the earliest date below:

- (1) the date the Employee ceases to be in a Class of Eligible Employees or ceases to qualify as an Employee;
- (2) the last day for which the Employee has made a required premium contribution for the insurance;
- (3) the date the policy is cancelled;
- (4) the date the Employee's Active Service ends, except as set forth below.
  - (a) If the Employee's Active Service ends due to Disability for which Monthly Benefits are or may become payable, the insurance for that Disabled employee will continue during the Benefit Waiting Period and thereafter, but only for as long as Monthly Benefits are payable for Disability or Residual Disability.
  - (b) Or, if the Employee's Active Service ends due to an unpaid leave of absence approved by the Employer, insurance for that Employee will continue while the Employee is on leave for a period not to exceed 4 weeks.
- (5) If the Employer insures his Employee as a member of a trade association or an insurance trust fund, on the date that the Employer no longer participates.

WAIVER OF PREMIUM

Premium for an Employee will be waived while Monthly Benefits for Disability or Residual Disability are payable to him.

EXTENSION OF BENEFITS AFTER CANCELLATION

Payment of Monthly Benefits will not be affected by cancellation of this policy as long as the Disability begins while this policy is in force.

LONG TERM DISABILITY INCOME POLIC.

CONVERSION PRIVILEGE

HOW AND WHEN TO CONVERT. When an Employee's Long Term Disability Insurance under this policy ceases, he may be eligible to be insured under a group policy providing converted long term disability benefits (called Converted Insurance) only if he: (1) is Entitled to Convert; and (2) applies in writing and pays the first premium for Converted Insurance to the Insurance Company within either of the following periods of time after the date his insurance under this policy ceases:

- (a) within 31 days, without evidence of good health; or
- (b) after 31 days but not more than 62 days, with evidence of good health.

ENTITLED TO CONVERT. An Employee is Entitled to Convert Long Term Disability Insurance only if:

- (1) he has been insured for at least 12 consecutive months under this policy or under this and a prior Long Term Disability group policy issued to the Policyholder; and
- (2) his insurance under this policy ceased because he was no longer in Active Service because of resignation, involuntary termination, layoff or an uninsured leave of absence.

NOT ENTITLED TO CONVERT. An Employee is not Entitled to Convert if:

- (1) he is no longer in a Class of Eligible Employees;
- (2) he has attained age 70;
- (3) he has retired;
- (4) he is not in Active Service because of disability; or
- (5) this policy is cancelled for any reason.

CONVERTED INSURANCE. Converted Insurance will be provided under the plan of benefits offered by the Insurance Company at the time the first premium is received.

A certificate under the group converted policy will be issued to the Employee describing his benefits. Converted Insurance will take effect on: (a) the day after the Employee's insurance under this policy ceases; or (b) in the case that an Employee is required to submit evidence of good health, the day the Insurance Company accepts the evidence. The premium on the day it takes effect will be based on: (a) class of risk; (b) age; and (c) benefits.

The Insurance Company or the Policyholder will give the Employee further details of the available Converted Insurance.

LONG TERM DISABILITY INCOME POLI.

SCHEDULE

CORE PLAN:

**BENEFIT WAITING PERIOD.** The Benefit Waiting Period for an Employee will be 180 days of continuous Disability. A period of Disability will be considered continuous even if the Disabled Employee returns to full-time work in his regular job for up to a total of 30 days during the Benefit Waiting Period. The Benefit Waiting Period will be extended by the number of days the Employee temporarily returned to work.

**MONTHLY BENEFIT.** The Monthly Benefit for an Employee for any month is:

1. The lesser of:
  - a. 60% of the Employee's Basic Monthly Earnings rounded to the nearest dollar;  
or
  - b. \$6,000; and
2. minus Other Benefits for that month.

BUY-UP OPTION:

**BENEFIT WAITING PERIOD.** The Benefit Waiting Period for an Employee will be 90 days of continuous Disability. A period of Disability will be considered continuous even if the Disabled Employee returns to full-time work in his regular job for up to a total of 15 days during the Benefit Waiting Period. The Benefit Waiting Period will be extended by the number of days the Employee temporarily returned to work.

**MONTHLY BENEFIT.** The Monthly Benefit for an Employee for any month is:

1. The lesser of:
  - a. 70% of the Employee's Basic Monthly Earnings rounded to the nearest dollar;  
or
  - b. \$6,000; and
2. minus Other Benefits for that month.

The Monthly Benefit will not be less than \$100, or 10% of the Monthly Benefit before reductions due to "Other Benefits" whichever is greater, regardless of any reductions shown in this Schedule. Monthly Benefits will be pro-rated if payable for any period less than a month.

LONG TERM DISABILITY INCOME POLICY

SCHEDULE (Continued)

**RESIDUAL DISABILITY BENEFIT.** The Monthly Benefit for any month during which the Employee is Residually Disabled will be:

1. the Monthly Benefit as figured above for the first 12 months Residual Disability Benefits are payable; and
2. the Monthly Benefit as figured above minus 50% of the Employee's monthly earnings received while he is Residually Disabled after the first 12 months Residual Disability Benefits are payable.

If, during any month the Employee returns to work the sum of his Residual Disability Benefit, his earnings, and any Other Benefits, exceed:

1. 100% of his Indexed Basic Monthly Earnings for the first 12 months benefits are payable for Residual Disability; or
2. 80% of his Indexed Basic Monthly Earnings after the first 12 months benefits are payable for Residual Disability;

his Residual Disability Benefit will be further reduced by such excess amount.

The Residual Disability Benefit will continue until the earlier of the following dates:

1. the date the Employee is no longer Disabled; or
2. the date Monthly Benefits are no longer payable.

The Insurance Company will, from time to time, review the Employee's status and may require an account of his earnings and proof of continued Disability.

The Monthly Benefit during a period of Residual Disability will not be less than \$100. or 10% of the Monthly Benefit before reductions due to "Other Benefits" whichever is greater, regardless of any reductions shown in this Schedule. Residual Disability Benefits will be pro-rated if payable for any period less than a month.

LONG TERM DISABILITY INCOME POLICY

SCHEDULE (Continued)

OTHER BENEFITS. Other Benefits include:

- (1) any amounts which the Employee or his dependents receive on account of his disability under:
  - (a) any group or franchise insurance or similar plan for persons in a group;
  - (b) the Canada and Quebec Pension Plans;
  - (c) any local, provincial or federal government disability or retirement plan or law;
  - (d) any state disability or retirement benefits which the Employee receives (or is assumed to receive\*) on his own behalf;
  - (e) any salary or wage continuance plan of the Employer;
  - (f) the Jones Act; or any workers' compensation, occupational disease or similar law including all permanent as well as temporary disability benefits;
  - (g) any work loss provision in the mandatory part of any "No-Fault" auto insurance policy;
- (2) any disability or Old Age benefits payable under the Federal Social Security Act, which the Employee receives (or is assumed to receive\*) on his own behalf;
- (3) any disability or Old Age benefits payable under the Federal Social Security Act which the Employee receives (or is assumed to receive\*) on behalf of his dependents; or which his dependents receive on account of the Employee's receipt (or assumed receipt\*) of such benefits; and
- (4) any retirement benefits which an Employee receives under: (a) a Retirement Plan sponsored by the Employer; (b) the Canada and Quebec Pension Plans; (c) the Railroad Retirement Act or the Railroad Unemployment Insurance Act, to the extent these benefits are funded by the Employer.

\*See the Assumed Receipt of Benefits provision.

OTHER INSURANCE. If there is other Group Disability insurance which:

- a) applies to the same claim for Disability; and
- b) contains the same or similar provision for reduction because of Other Benefits;

the policy shall be liable for its pro rata share of the total claim.

"Pro rata share" means the proportion of the total benefit that the amount payable under one policy, in the absence of such other insurance, bears to the total applicable benefits under all such policies.

LONG TERM DISABILITY INCOME POLICY

SCHEDULE (Continued)

ASSUMED RECEIPT OF BENEFITS.

If an Employee is covered under the Federal Social Security Act, for any disability or Old Age benefit, Statutory Disability (if applicable), Worker's Compensation, or similar laws, he will be assumed to be receiving such benefits for himself (and for his dependents, if applicable). These assumed benefits will be the amount the Insurance Company estimates he (and his dependents, if applicable) is eligible to receive. This assumption will not be made if the Employee gives the Insurance Company proof that:

- (1) he has applied for these benefits; and
- (2) payments were denied.

However, if payments for disability were denied solely because the disability was not expected to last at least 12 consecutive months, the Employee will be assumed to be receiving such benefits after his disability has continued for 12 consecutive months. This assumption will not be made if he gives the Insurance Company proof that:

- (1) he has re-applied for benefits; and
- (2) payments were again denied.

The Insurance Company will not assume receipt of, nor reduce the Monthly Benefit by, any elective, actuarially reduced, early retirement benefits under such laws until the Employee actually receives such benefits.

INCREASES IN OTHER BENEFITS

The Insurance Company will not consider any cost of living increase in any Other Benefits which is effective after:

- (1) the first payment of such Other Benefit becomes due; and
- (2) Monthly Benefits become payable under the policy.

RECOVERY OF OVERPAYMENTS

If the Monthly Benefit for any month is overpaid, the Insurance Company has the right to recover the amount overpaid by either of the following methods:

- (1) a deduction of the overpaid amount from any future payments by the Insurance Company; or
- (2) a lump sum repayment by the Employee of the overpaid amount.

LONG TERM DISABILITY INCOME POLICY

SCHEDULE (Continued)

LUMP SUM PAYMENTS.

Any Other Benefits paid in a lump sum (except as shown below) will be deemed to be paid in monthly amounts prorated over the time for which the sum was paid. If no such time is stated, the lump sum will be prorated monthly over the expected life span of the Employee. The Insurance Company will determine that expected life span.

Lump Sum Payments under:

- (1) a Retirement Plan will be deemed to be paid in the monthly amount which:
  - (a) is provided by the standard annuity option under the Plan, as identified by the Policyholder; or
  - (b) is prorated under a standard annuity table over the expected life span of the Employee (if the Plan does not have a standard annuity option);
- (2) the Jones Act or any workers' compensation, occupational disease or similar law (which includes benefits paid under a Compromise and Release) will be deemed to be paid monthly:
  - (a) at the rate stated in the award;
  - (b) at the rate paid prior to the lump sum (if no rate is stated in the award); or
  - (c) at the maximum rate set by the law (if no rate is stated and the Employee did not receive a periodic award).

LONG TERM DISABILITY INCOME POLIC

INSURING PROVISIONS

LONG TERM DISABILITY BENEFITS

COMMENCEMENT OF BENEFITS.

The Insurance Company will begin paying Monthly Benefits in amounts determined from the Schedule when it receives due proof that:

- (1) the Employee became Disabled while insured for this Long Term Disability Insurance; and
- (2) his Disability has continued for a period longer than the Benefit Waiting Period shown in the Schedule.

If an Employee is on an Employer approved leave of absence, Monthly Benefits will not be payable until the later of: a) the date the Benefit Waiting Period is satisfied; or b) the date the Employee was scheduled to return to Active Service.

DURATION OF BENEFITS.

The Insurance Company will stop paying Monthly Benefits on the earlier of the following dates:

- (1) the date the Employee ceases to be Disabled;
- (2) the Employee's 65th birthday if he becomes Disabled before his 60th birthday;
- (3) the end of 5 years from the date the Employee becomes Disabled if he becomes disabled on or after his 60th birthday.

LONG TERM DISABILITY INCOME POL.

INSURING PROVISIONS

LONG TERM DISABILITY BENEFITS (Continued)

MENTAL ILLNESS, ALCOHOLISM AND DRUG ABUSE LIMITATION.

The Insurance Company will pay Monthly Benefits for no more than 24 months during an Employee's lifetime for Disability or Residual Disability caused by any one or more of the following conditions:

- Alcoholism
- Drug addiction or abuse
- Bipolar affective disorder (manic depressive syndrome)
- Schizophrenia
- Delusional (paranoid) disorders
- Psychotic disorders
- Depressive disorders
- Anxiety disorders
- Somatoform disorders (psychosomatic illness)
- Eating disorders
- Mental Illness

This limitation shall not apply to any period of time during which the Employee is confined for more than fourteen consecutive days in a hospital licensed to provide care and treatment for the condition causing the Disability.

LONG TERM DISABILITY INCOME POL

INSURING PROVISIONS

LONG TERM DISABILITY BENEFITS (Continued)

PRE-EXISTING CONDITION LIMITATION.

The Insurance Company will not pay Monthly Benefits for any period of Disability which results, directly, from an Injury or Sickness for which the Employee, during the 3 months prior to the most recent Effective Date of his insurance: (1) incurred expenses; (2) received medical treatment; (3) took prescribed drugs or medicines; or (4) consulted a physician. This limitation will not apply to a period of Disability which begins more than 12 months after the most recent Effective Date of the Employee's Insurance.

CONTINUITY OF COVERAGE AND PRE-EXISTING CONDITION LIMITATION.

The Pre-existing Condition Limitation will be waived, as described below, for an Employee who was insured on the day before the Effective Date of this policy under a group long term disability policy: (a) sponsored by the Employer; and (b) replaced by this policy; provided such Employee:

- (1) is in Active Service on the Effective Date of this Policy; and
- (2) has fulfilled the requirements of any Pre-existing Condition Limitation of the replaced policy.

However, if such Employee:

- (1) is in Active Service on the Effective Date of this policy; and
- (2) has not fulfilled the requirements of any Pre-existing Condition Limitation of the replaced policy because the time period required prior to start of Disability has not been satisfied;

any portion of time which may have been satisfied under such Pre-existing Condition Limitation will be applied toward the satisfaction of that time period requirement of the Pre-existing Condition Limitation of this policy.

If Monthly Benefits are determined to be payable, they will be paid according to the provisions of this policy.

LONG TERM DISABILITY INCOME POL.

INSURING PROVISIONS

LONG TERM DISABILITY BENEFITS (Continued)

SUCCESSIVE PERIODS OF DISABILITY.

Separate periods of Disability resulting from the same or related causes will be considered one period of Disability unless separated by the Employee no longer being qualified to receive Monthly Benefits for at least 6 consecutive months.

Separate periods of Disability resulting from unrelated causes will be considered one period of Disability unless separated by a period of at least one full day, during which the Employee is no longer qualified to receive Monthly Benefits.

These provisions do not apply:

- (1) to the Benefit Waiting Period; or
- (2) when the Employee becomes eligible for benefits under any group long term disability policy.

LONG TERM DISABILITY INCOME POL...

INSURING PROVISIONS

LONG TERM DISABILITY BENEFITS (Continued)

FAMILY SURVIVOR BENEFITS.

The Insurance Company will pay Family Benefits as set forth below for up to 3 months if:

- (1) the Employee becomes Disabled while insured for Family Benefits;
- (2) the Disability has continued for at least 6 months beyond the Benefit Waiting Period; and,
- (3) the Employee dies while Monthly Benefits are being paid for that Disability and the Insurance Company receives due proof of death.

PAYMENT OF FAMILY BENEFITS.

Family Benefits will be payable Monthly beginning one month after the Employee's death. Family Benefits will be paid to the Employee's lawful spouse if living. If the lawful spouse is not living when any Family Benefit is due, it will be paid in equal shares to each child of the Employee. No Family Benefits will be paid if there is no lawful spouse or child.

The term child means the Employee's unmarried child (including a stepchild living with the Employee at the time of death) who is less than 21 years old. Family Benefits may not be assigned. Payment to anyone as provided above will release the Insurance Company from all liability for Family Benefits to the extent of the payments made.

AMOUNT OF FAMILY BENEFITS.

The amount payable for Family Benefits will be equal to 100% of the sum of:

- (1) the Monthly Benefit due for the last full month of Disability before the Employee's death; and
- (2) any amount by which such Monthly Benefit was reduced because of wage or profit received for work performed.

JNG TERM DISABILITY INCOME POLI.

INSURING PROVISIONS

LONG TERM DISABILITY BENEFITS (Continued)

EXCLUSIONS.

No Monthly Benefits will be paid if the Employee's Disability or Residual Disability results, directly or indirectly, from:

- (1) injuries intentionally self-inflicted while sane or insane; or
- (2) any act or hazard of a declared or undeclared war.

No Monthly Benefits will be paid for a period of Disability or Residual Disability when the Employee is not under the care of a licensed physician.

## LONG TERM DISABILITY INCOME POLICY

## PREMIUMS

**PREMIUM PAYMENT.** The first premium will be due on the Effective Date. After that, premium will be due monthly unless the Policyholder and the Insurance Company agree on some other method of premium payment. The Policyholder and the Insurance Company may agree to change the method of premium payment from time to time. Premiums are payable at the Home Office of the Insurance Company or to an authorized agent of the Insurance Company.

**PREMIUM DUE DATE.** After the Effective Date, the Premium Due Date will be the day of the month with the same number as the Anniversary Date or the last day of a month in which there is no day with the same number as the Anniversary Date. If the Policyholder and the Insurance Company agree that premiums will be paid on a quarterly, semi-annual or annual basis, the Premium Due Date will be at the appropriate regular interval, quarterly, semi-annually or annually.

**MONTHLY STATEMENT DATE.** If premiums are to be paid monthly, the Monthly Statement Date will be the same as the Premium Due Date. If premiums are to be paid on a quarterly, semi-annual or annual basis, the Monthly Statement Date will be the day in each month with the same number as the Premium Due Date.

**MONTHLY PREMIUM STATEMENT.** If premiums are due monthly, a Monthly Premium Statement will be prepared as of the Premium Due Date. This Monthly Premium Statement will show the premium due. If premiums are due quarterly, semi-annually or annually, a Monthly Premium Statement will be prepared as of the Monthly Statement Date for the time from the Monthly Statement Date to the next Premium Due Date. This Monthly Statement will reflect any pro rata premium charges and credits due to changes in the number of insured persons and changes in insurance amounts that took place in the preceding month.

**SIMPLIFIED ACCOUNTING.** To simplify the accounting process, premium adjustments will be made on the Monthly Statement Date that is the same as or next follows the date that (1), (2) or (3) below takes place.

- (1) A person becomes insured.
- (2) The amount of insurance on a person changes, but not due to revision of the Schedule.
- (3) A person ceases to be insured.

## LONG TERM DISABILITY INCOME POLICY

## PREMIUMS (Continued)

## MONTHLY PREMIUM RATE

## CORE PLAN:

The monthly premium for each employee will be determined at the rate of \$.26 per month for each \$100 of Covered Payroll.

Covered Payroll for an Employee will mean his monthly rate of Basic Earnings for the insurance month prior to the date such determination is made. However, an Employee's Covered Payroll will not include any part of his monthly Basic Earnings which exceed \$10,000.

## BUY-UP OPTION:

The monthly premium for each employee will be based on the Employee's Age and amount of Covered Payroll. The Monthly Rates per \$100 of Covered Payroll are set forth in the Table of Monthly Insurance Rates below and are in addition to the Monthly Premium for the CORE Plan. Each Employee's rate will be calculated on his age as of the last plan anniversary.

Table of Monthly Insurance Rates

AGE	RATE
Up to 25	.07
25-29	.11
30-34	.16
35-39	.20
40-44	.31
45-49	.41
50-54	.59
55-59	.74
60-64	.74
65-69	.66
70+	.71

Covered Payroll for an Employee will mean his monthly rate of Basic Earnings for the insurance month prior to the date such determination is made. However, an Employee's Covered Payroll will not include any part of his monthly Basic Earnings which exceed \$8,571.

## LONG TERM DISABILITY INCOME POLICY

## PREMIUMS (Continued)

**CALCULATION OF PREMIUMS.** The premium will be calculated by multiplying the total amount of Covered Payroll on the Premium Due Date by the Monthly Premium Rate applicable on that date. If the Policyholder and the Insurance Company agree to a change in the method of premium payment or to a change in the Anniversary Date, an appropriate pro rata adjustment will be made in the premium due.

**CHANGES IN PREMIUM RATES.** The premium rates may be changed by the Insurance Company from time to time with at least 31 days advance written notice. No change in rates will be made until 24 months after the Effective Date. An increase in rates will not be made more often than once in a 12 month period. However, the Insurance Company reserves the right to change the rates at any time if: 1) the terms of the policy change; 2) a division, subsidiary, affiliated company or eligible class is added or deleted from the policy; 3) there is a change in the factors bearing on the risk assumed; or 4) any federal or state law or regulation is amended to the extent that the Company's benefit obligation is affected. If an increase in rates takes place on a date that is not a Premium Due Date, a pro rata premium will be due on the date of the increase. The pro rata premium will apply for the increase from the date of the increase to the next Premium Due Date. If a decrease in rates takes place on a date that is not a Premium Due Date credit will be granted. The pro rata credit will apply for the decrease from the date of the decrease to the next Premium Due Date.

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Premiums

(8059)

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EXHIBIT A

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LONG TERM DISABILITY INCOME POLICIES

CANCELLATION OF POLICY

NOTICE OF CANCELLATION.

The Policyholder or the Insurance Company may cancel the policy as of any Premium Due Date by giving written notice at least 31 days in advance of that date.

If a premium is not paid when due, the policy will automatically be cancelled as of the Premium Due Date, except as set forth below.

The Insurance Company may cancel the policy as of any premium due date if the number of insured Employees is less than 10 or less than 75% of those eligible.

GRACE PERIOD.

If, before a Premium Due Date, the Policyholder has not given written notice to the Insurance Company that the policy is to be cancelled, a Grace Period of 31 days will be granted for the payment of each premium after the initial premium. The policy will stay in effect during that time. If any premium is not paid by the end of the Grace Period, the policy will automatically be cancelled at the end of the Grace Period; except that, if the Policyholder has given written notice in advance of an earlier date of cancellation, the policy will be cancelled as of the earlier date. The Policyholder will be liable to the Insurance Company for any unpaid premium for the time the policy was in force.

LONG TERM DISABILITY INCOME POLICY

PAYMENT OF BENEFITS

TO WHOM PAYABLE. Any benefits that are payable for Disability will be paid to the Employee. Family Benefits will be paid to the eligible survivor(s) according to the terms of that section.

If any person to whom benefits are payable is a minor or, in the opinion of the Insurance Company, is not able to give a valid receipt for any payment due him, such payment will be made to his legal guardian. However, if no request for payment has been made by his legal guardian, the Insurance Company, may at its option, make payment to the person or institution appearing to have assumed his custody and support.

If an Employee dies while any of his Disability benefits remain unpaid, the Insurance Company may, at its option, make direct payment to any of the following living relatives of the Employee: spouse, mother, father, children, brothers or sisters; or to the executors or administrators of the Employee's estate.

Payment in the manner described above will release the Insurance Company from all liability to the extent of any payment made.

TIME OF PAYMENT. Any Disability benefits will be paid at regular intervals of not more than one month. Any balance which remains unpaid at the end of any period for which the Insurance Company is liable will be paid at that time.

## LONG TERM DISABILITY INCOME POLICY

## PROVISIONS

**ENTIRE CONTRACT.** The entire contract will be made up of the policy, the application of the Policyholder, a copy of which is attached to the policy, and the applications, if any, of the Employees.

**POLICY CHANGES.** Changes may be made in the policy only by amendment signed by the Policyholder and by the Insurance Company acting through its President, Vice President, Assistant Vice President, Director or Assistant Director. No agent may change or waive any terms of the policy.

**STATEMENTS NOT WARRANTIES.** All statements made by the Policyholder or by an insured Employee will be deemed representations and not warranties. No statement made by the Policyholder or by the Employee to obtain insurance will be used to void or reduce the insurance unless it is made in writing and is signed by the Policyholder or the Employee and a copy is sent to the Policyholder, the Employee or his Beneficiary.

**NOTICE OF CLAIM.** Written notice of claim must be given to the Insurance Company within 30 days after the occurrence or start of the loss on which a claim is based. If notice is not given in that time, the claim will not be invalidated or reduced if it is shown that written notice was given as soon as was reasonably possible.

**CLAIM FORMS.** When the Insurance Company receives the notice of claim, it will give to the claimant, or to the Policyholder for the claimant, the claim forms it uses for filing proof of loss. If the claimant does not get these claim forms within 15 days after the Insurance Company receives notice of claim, he will be considered to have met the proof of loss requirements if he submits written proof of loss within 90 days after the date of loss. This proof must describe the occurrence, character and extent of the loss for which a claim is made.

**PROOF OF LOSS.** Written proof of loss must be given to the Insurance Company within 90 days after the date of the loss for which a claim is made. If written proof of loss is not given in that time, the claim will not be invalidated nor reduced if it is shown that written proof of loss was given as soon as was reasonably possible. Upon request, written proof of continued Disability and of regular attendance of a physician must be given to the Insurance Company within 30 days of such request.

**PHYSICAL EXAMINATION.** The Insurance Company, at its own expense, will have the right to examine any person for whom a claim is pending as often as it may reasonably require.

**LEGAL ACTIONS.** No action at law or in equity will be brought to recover on the policy until at least 60 days after proof of loss has been filed with the Insurance Company. No action will be brought at all unless brought within 3 years (Kansas: 5 years; South Carolina: 6 years), after the time within which proof of loss is required by the policy.

**TIME LIMITATIONS.** If any time limit set forth in the policy for giving notice of claim or proof of loss, or for bringing any action at law or in equity is less than that permitted by the law of the state in which the Employee lives when the policy is issued, then the time limit provided in the policy is extended to agree with the minimum permitted by the law of that state.

LONG TERM DISABILITY INCOME POLICY

PROVISIONS (Continued)

**PHYSICIAN/PATIENTRELATIONSHIP.** The Employee will have the right to choose any physician who is practicing legally. The Insurance Company will in no way disturb the physician/patient relationship.

**CERTIFICATES.** The Insurance Company will issue to the Policyholder for delivery to each insured Employee an individual certificate. The Policyholder will be responsible for distributing the certificates to its Employees. The certificate will show the benefits provided under the policy. It will set forth any changes in benefits due to age and to whom benefits will be paid. Nothing in the certificate will change or void the terms of the policy.

LONG TERM DISABILITY INCOME POLICY

MISCELLANEOUS PROVISIONS

**INSURANCE DATA.** The Policyholder will give the Insurance Company all of the data that it needs to calculate the premium and all other data that it may reasonably require. Failure of the Policyholder to give this data will not void or continue an Employee's insurance. The Insurance Company has the right to examine the Policyholder's records relative to these benefits at any reasonable time while the policy is in effect. It also has this right until all rights and obligations under the policy are finally determined.

**MALE PRONOUN.** The male pronoun as used herein will be deemed to include the female.

**INCORRECT PREMIUM PAYMENT.** Premiums paid in error for a person who is not eligible to be insured, or for a person after his insurance has ceased, will be refunded without interest when requested by the Policyholder. This premium will not be refunded, however, for more than a 6 month period nor for any period before the last Anniversary Date.

**ADMINISTRATION.** The Insurance Company will deal solely with the Policyholder who will be deemed the representative of each Employee. Any action taken by the Policyholder will be binding on the Employees.

**NOT IN LIEU OF WORKERS' COMPENSATION.** The policy is not in lieu of and does not affect requirements for coverage under workers' compensation laws.

LIFE INSURANCE COMPANY OF NORTH AMERICA

AMENDATORY RIDER

This rider amends the policy to which it is attached. It replaces any previous rider as of the effective date stated below.

AFFILIATED OR SUBSIDIARY EMPLOYERS

Classes of employees of the employers named below are eligible to be covered by this policy.

Granite Broadcasting (Week-TV 25)

Granite Broadcasting (KNTV)

Granite Broadcasting (KBJR-TV 6)

Granite Broadcasting (WPTA-TV)

Granite Broadcasting (WTVH-5)

Granite Broadcasting (KSEE-TV 24)

No other policy provision or condition is changed in any way by this rider.

Effective date January 1, 1995	at the hour stated in the policy	Part of Policy No. FLK-8059
Issued To: GRANITE BROADCASTING CORPORATION		

LM-6N34

  
JOHN K. LEONARD, President

**SPECIMEN**

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**EXHIBIT A**

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LIFE INSURANCE COMPANY OF NORTH AMERICA  
Philadelphia, Pennsylvania

We, GRANITE BROADCASTING CORPORATION  
whose main office address is East Peoria, IL  
hereby apply to the Life Insurance Company of North America for Group Policy  
No. FLK-8059

We approve and accept the terms of this Group Policy.

This application is to be signed in duplicate. One part is to be attached to the Group Policy; the other part is to be returned to the Life Insurance Company of North America.

This application supersedes any previous application for this Group Policy.

GRANITE BROADCASTING CORPORATION  
(Full or Corporate Name of Applicant)

Signed at \_\_\_\_\_ By \_\_\_\_\_ (Signature and Title)

**SPECIMEN**

On \_\_\_\_\_ Witness \_\_\_\_\_  
(To be signed by Licensed Resident Agent where required by law)

LM-1K59 (This Copy is To Remain Attached To The Policy)

LIFE INSURANCE COMPANY OF NORTH AMERICA  
Philadelphia, Pennsylvania

We, GRANITE BROADCASTING CORPORATION  
whose main office address is East Peoria, IL  
hereby apply to the Life Insurance Company of North America for Group Policy  
No. FLK-8059

We approve and accept the terms of this Group Policy.

This application is to be signed in duplicate. One part is to be attached to the Group Policy; the other part is to be returned to the Life Insurance Company of North America.

This application supersedes any previous application for this Group Policy.

GRANITE BROADCASTING CORPORATION  
(Full or Corporate Name of Applicant)

Signed at \_\_\_\_\_ By \_\_\_\_\_ (Signature and Title)

**SPECIMEN**

On \_\_\_\_\_  
(To be signed by Licensed Resident Agent where required by law)

LM-1K59 (This Copy is To Be Returned To Us)